

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92-486

In the Matter of)

Petition for Declaratory Ruling)
Concerning Section 312(a)(7))
of the Communications Act)

MM Docket No. 92-254 ✓

**PUBLIC NOTICE
REQUEST FOR COMMENTS**

Adopted: October 30, 1992

Released: October 30, 1992

Comment Date: January 22, 1993

Reply Comment Date: February 23, 1993

By the Commission: Commissioner Barrett issuing a separate statement at a later date.

1. The Commission has before it an Application for Review, filed by Kaye, Scholer, Fierman, Hays & Handler ("Kaye, Scholer"), of the action taken by the Chief of the Mass Media Bureau in a letter on August 21, 1992 (FCC Ref. 8210-AJZ/MJM), which declined to grant the relief sought in Kaye, Scholer's Petition for Declaratory Ruling of July 29, 1992. In its petition, Kaye, Scholer had requested a declaratory ruling from the Commission with respect to the following:

whether a broadcaster may, consistent with the "reasonable access" provisions of Section 312(a)(7) of the Communications Act and the "no censorship" provision of Section 315(a) of the Communications Act, "channel" into those hours when there is no reasonable risk of children being in the audience, candidate "uses" that present graphic depictions of dead or aborted and bloodied fetuses or fetal tissue.

Kaye, Scholer Application for Review at 5. In comments filed in response to the Kaye, Scholer Application for Review, another party questioned whether a policy that denies licensees' ability to channel such programming is consistent with the Commission's "adoption and enforcement of children's television programming rules." Comments of Mark Van Loucks in Support of Application for Review at 14. After determining that the specific political advertisement at issue was not indecent under Section 1464, the Bureau concluded that a licensee could not channel the advertisement to the indecency "safe harbor" without running afoul of Sections 312(a)(7) and 315 of the Act.

of Sections 312(a)(7) and 315 of the Act.

2. In addition, the Chief of the Mass Media Bureau has issued today, under severe time constraints, a letter ruling in response to a complaint filed on behalf of Daniel Becker, a candidate for Congress in the Ninth District of Georgia, against WAGA-TV, Atlanta. WAGA-TV has refused to air Mr. Becker's 30-minute campaign program "Abortion in America: The Real Story" outside the safe harbor for indecent material because the station argues that to do otherwise would violate 18 U.S.C. §1464. Unlike the political advertisement at issue in the Kaye, Scholer ruling, the Bureau has not determined whether "Abortion in America" is or is not indecent under Section 1464 because the program has not yet been broadcast by the station. The Bureau stated that until the Commission provides definitive guidance, it would not be unreasonable for the licensee to rely on a prior informal staff opinion in this area, set forth in the Letter from Chairman Mark Fowler to Hon. Thomas A. Luken, dated January 19, 1984, and conclude that Section 312(a)(7) does not require it to air, during hours outside the "safe harbor", material that it reasonably and in good faith believes is indecent.

3. We are convinced that these decisions present extremely difficult questions that would best be resolved with the benefit of full public comment. Thus, we hereby request public comment on the issues raised by the rulings described above. Specifically, we seek comment on all issues concerning what, if any, right or obligation a broadcast licensee has to channel political advertisements that it reasonably and in good faith believes are indecent. We also seek comment as to whether broadcasters have any right to channel material that, while not indecent, may be otherwise harmful to children. In this latter respect, we specifically invite commenters to address the proper scope of any such right and the standard by which the Commission should evaluate the reasonableness of broadcasters' judgments rendered in exercising that right.¹

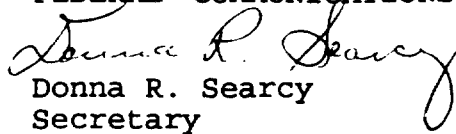
4. Interested parties may file comments on or before January 22, 1993, and reply comments on or before February 23, 1993. An original and five copies of all comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Finally, in view of the general nature

¹ Until the Commission acts on the Kaye, Scholer Application for Review, licensees should follow the principles set forth in the Bureau's letter rulings. See Gillette Communications of Atlanta, Inc. and Kaye, Scholer, Fierman, Hays and Handler, DA 92-1160 (MMB), released August 21, 1992; and Letter to Daniel Becker, DA 92-1503 (MMB), released October 30, 1992.

and broad application fo the policy issues raised herein, we will treat this as a non-restricted proceeding subject to Section 1.1206(b)(4) of our rules. 47 C.F.R. §1.1206(b)(4).

5. For additional information on this proceeding, contact Milt Gross, Chief of the Political Programming Branch, (202) 632-7586.

FEDERAL COMMUNICATIONS COMMISSION


Donna R. Searcy
Secretary